

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VISHAL SINGH UPPAL,)	CASE NO. C06-0261-JLR
)	
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION
)	RE: INDEFINITE DETENTION
MICHAEL CHERTOFF, et al.,)	
)	
Respondent.)	
_____)	

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner is a native and citizen of India who is being detained by United States Immigration and Customs Enforcement (“ICE”) pursuant to an order of removal that became final on September 1, 2005. On February 23, 2006, petitioner filed, pro se, a Petition for Writ of Habeas Corpus pursuant to 8 U.S.C. § 2241, challenging the constitutional and statutory authority of ICE to detain him. (Dkt. #4). Respondents contend that petitioner’s detention is warranted because ICE has received the necessary travel documents and his removal is likely in the reasonably foreseeable future. (Dkt. #14).

Having carefully reviewed the entire record, I recommend that petitioner’s habeas petition

(Dkt. #4) be DENIED and respondents' motion to dismiss (Dkt. #14) be GRANTED.

II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner Vishal Singh Uppal is a native and citizen of India. (Dkt. #16 at L5-11). On November 16, 1996, he entered the United States at San Francisco, California as a B-2 non-immigrant visitor for pleasure with authorization to remain in the United States until April 15, 1997. *Id.* On February 10, 1997, petitioner filed an I-598 application for asylum. *Id.* On June 8, 1999, the former Immigration and Naturalization Service ("INS") denied petitioner's application for asylum finding him not credible due to "material inconsistencies between [his] testimony and application" and referred petitioner's case to an Immigration Judge ("IJ"). (Dkt. #16 at R30). The same day, the INS issued a Notice to Appear charging petitioner with removal pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act ("INA") because he remained in the United States longer than permitted. (Dkt. #16 at R88). On July 15, 2004, an IJ denied petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture, and ordered him removed to India. (Dkt. #16 at L224). Petitioner appealed the IJ's decision to the Board of Immigration Appeals ("BIA"). On September 1, 2005, the BIA affirmed the IJ's decision and dismissed the appeal. (Dkt. #16 at L264).

On February 23, 2006, petitioner filed the instant habeas petition. (Dkt. #4). On March 13, 2006, petitioner also filed a Petition for Review and a Motion for Stay with the United States Court of Appeals for the Ninth Circuit. (Case No. 06-71454). The same day the Ninth Circuit entered a temporary stay of removal. On June 9, 2006, the Ninth Circuit dismissed the appeal based on lack of jurisdiction because petitioner's appeal was not filed within 30 days from the issuance of the BIA's September 1, 2005, order.

01 III. DISCUSSION

02 The post-removal-detention statute, INA § 241(a), 8 U.S.C. § 1231(a), provides for the
03 mandatory detention of aliens awaiting removal from the United States for an initial period of three
04 months. This three months may be followed by an additional three months discretionary detention
05 during which detention remains presumptively valid. *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct.
06 2491, 2505, 150 L. Ed. 2d 653 (2001).

07 In *Zadvydas*, the Supreme Court explained that after this six-month period, the alien is
08 eligible for conditional release upon demonstrating that there is “no significant likelihood of
09 removal in the reasonably foreseeable future.” *Id.* Nonetheless, the six month presumption “does
10 not mean that every alien not removed must be released after six months. To the contrary, an alien
11 may be held in confinement until it has been determined that there is no significant likelihood of
12 removal in the reasonably foreseeable future.” *Id.* The petitioner has the burden of coming
13 forward with “good reason to believe there is no significant likelihood of removal in the reasonably
14 foreseeable future.” *Id.* Then the burden shifts to respondents to produce evidence which could
15 rebut petitioner’s showing. *Id.*

16 In this case, petitioner has been in ICE custody following a final order of removal since
17 November 17, 2005. Thus, petitioner’s six-month presumptively reasonable removal period
18 expired on or about May 17, 2006. Respondents contend that petitioner’s continued detention
19 is warranted because ICE has secured travel documents for his removal to India and the only thing
20 preventing his removal is his Petition for Review and related temporary stay of removal. (Dkt.
21 #14 at 6). However, the Ninth Circuit has since dismissed petitioner’s appeal and stay of removal.
22 Accordingly, there are no longer any barriers to petitioner’s removal. As petitioner has failed to

01 support any assertion that his removal is not reasonably foreseeable, the Court must deny habeas
02 relief. *See Zadvydas* , 533 U.S. at 701; *see also Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137
03 (S.D. Cal. 2001)(finding that petitioner had not met his burden under *Zadvydas* where petitioner
04 failed to show any barriers to his repatriation to Pakistan).

05 IV. CONCLUSION

06 For the foregoing reasons, I recommend that respondents' motion to dismiss be granted,
07 and that this action be dismissed. A proposed Order accompanies this Report and
08 Recommendation.

09 DATED this 12th day of June, 2006.

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11 Mary Alice Theiler
12 United States Magistrate Judge
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